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No. 99-1434

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

v.

THE MEAD CORPORATION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF *AMICUS CURIAE* OF THE CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION IN SUPPORT OF RESPONDENT'S OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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BRIEF *AMICUS CURIAE*

Pursuant to Supreme Court Rule 37.2(a) on written consent of all parties, the Customs and International Trade Bar Association (CITBA) respectfully submits this brief *amicus curiae* in support of respondent The Mead Corporation's (Mead) opposition to the United States of America's petition for a writ of certiorari.[1]

INTERESTS OF *AMICUS CURIAE*

CITBA, organized in 1919, is a national professional association of lawyers who practice customs and international trade law before federal courts and agencies with jurisdiction over such matters. This brief reflects the judgment of CITBA members reached in the exercise of their profession and is offered solely to assist in improving our legal system.

CITBA participated in this case as *amicus curiae* on appeal before the U.S. Court of Appeals for the Federal Circuit. CITBA also appeared as *amicus curiae* before this Court in 1998 in *United States v. Haggar Apparel Co.*, 526 U.S. 380; 119 S. Ct. 1392 (1999), a case presenting similar issues.

STATEMENT

At issue in this case is whether the courts must accord controlling-weight deference under *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), to ordinary Customs classification rulings.

The Customs classification rulings at issue, including HQ No. 953126, are brief, informal letter rulings, issued to one person, applying the law to a set of facts described in the

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[1] Pursuant to Rule 37.6, amicus states that no counsel for a party authored this brief in whole or in part. Further, no person or entity other than CITBA, its members, and its counsel made a monetary contribution to the preparation or submission of this brief.

ruling request. *See* 19 C.F.R. Part 177. The law applied is the Harmonized Tariff Schedule of the United States (HTSUS) and the issue is whether the scope of a particular tariff subheading encompasses a specific good. The purpose of classification rulings is to provide importers with a definitive statement regarding how their goods will be classified by Customs at the time of importation, and the duties that will be assessed thereon, so that importers may price their goods accordingly. Most classification rulings do not set forth detailed, reasoned expositions of the law on a particular matter. They may be issued by a variety of Customs officials at port locations and at the headquarters level, are not generally subject to notice-and-comment procedures,[2] and are not subject to direct judicial review absent a showing of irreparable harm. *See* 28 U.S.C. § 1581(h). Although Customs disseminates some rulings to the public through its web-site, Lexis and Westlaw, all rulings are not published reliably in an official government publication.

MISSTATEMENTS OF FACT OR LAW

I. PETITIONER'S CITATION TO CUSTOMS SERVICE RULING HQ NO. 955937 (OCT. 21, 1994) IS INCORRECT

Petitioner's contention that HQ No. 955937 is the Customs Service ruling that applies to the judgment of the court of appeals is incorrect. *See* Petition for a Writ of Certiorari 1; Pet. App. 28a-47a. The opinion of the U.S. Court of Appeals for the Federal Circuit makes clear that the "classification ruling" with which the court was concerned

[2] Although certain Customs classification rulings are subject to notice-and-comment procedures, *see* 19 U.S.C. § 1625 and 19 C.F.R. § 177.10(c), the court of appeals expressed no opinion on such rulings. *The Mead Corp. v. United States*, 185 F.3d, 1304, 1307 n.1; Pet. App. 6a.

was HQ No. 953126 (Jan. 11, 1993), App., *infra*, 1a-3a, not the decision on the application for further review of the protest included in the appendix to petitioner's brief.

In the first section of its opinion, the court of appeals states: "In a January 11, 1993 ruling, Customs classified the subject planners as bound diaries under subheading 4820.10.20 ..." *The Mead Corp. v. United States*, 185 F.3d 1304, 1305 (Fed. Cir. 1999); Pet. App. 2a. The court refers to this ruling as the "1993 ruling." *Mead*, 185 F.3d at 1306; Pet. App. 3a. The Customs decision on respondent's application for further review of its protest is dated October 21, 1994. The court's opinion deals with classification rulings, not protest decisions. *See Mead*,185 F.3d at 1307; Pet. App. 5a. The kinds of rulings with which the court of appeals was concerned is evident from the extensive references in its opinion to Part 177 of Title 19 of the Code of Federal Regulations, which deals with administrative rulings. Had the court been dealing with protest decisions, it would have referred to Part 174, which deals with administrative protests. *See* 19 C.F.R. § 174.23-174.27.

Incongruously, petitioner states that the ruling that applies to this case is a protest decision issued under 19 C.F.R. Part 174, and yet does not include the statutory (19 U.S.C. § 1514) or regulatory provisions (19 C.F.R. Part 174) relating to administrative protests in its list of "Statutory and Regulatory Provisions Involved." *See* Petitioner's Brief 2-4. The statutory and regulatory provisions cited by petitioner relate to Customs ruling HQ No. 953126 (Jan. 11, 1993), a letter ruling to the importer on the proper tariff classification of the imported goods at issue. Since the holding of the court of appeals relates to HQ No. 953126, petitioner's extensive description of the protest decision on pages 5-8 of its brief should be disregarded.

HQ 953126 is the administrative ruling Customs issued in 1993 after reviewing a sample of the goods respondent intended to import. Thereafter, respondent imported the "Personal Day Planners" using the tariff classification

indicated in HQ No. 953126 and protested the liquidation of the entries because it disagreed with the classification. HQ No. 955937 is the Customs decision on respondent's administrative protest of the entries at issue. It is not, however, the ruling that was the subject of the appellate court's judgment for which petitioner seeks review.

II. PETITIONER MISSTATED THE HOLDING OF THE COURT OF APPEALS

The court of appeals did not hold that "tariff classification rulings of the Customs Service are to be given no judicial deference, and are instead to be disregarded utterly in interpreting the customs provisions." Petitioner's Brief 4-5. Rather, the court held that "*Haggar*, and thus *Chevron* deference, does not extend to ordinary classification rulings." *Mead*, 185 F.3d at 1307; Pet. App. 5a. Moreover, the portion of the appellate court's opinion immediately preceding its holding reveals that by "*Chevron* deference," the court meant "controlling weight." *Mead*, 185 F.3d at 1306; Pet. App. 5a.

The entire context of the proceedings below and the opinion of the appellate court demonstrate that the court was concerned with the impact of this Court's decision in *Haggar* on ordinary classification rulings. By order dated May 27, 1999, the court of appeals instructed the parties to brief this question: "How, if at all, does the Supreme Court's decision in *United States v. Haggar Apparel Co.*, 119 S. Ct. 1392 (1999), affect this court's standard of review of classification rulings issued by the United States Customs Service?" App., *infra*, 4a. This was the question posed by the court of appeals and the question answered in its opinion of July 28, 1999.

Fairly read, the appellate court's statement that it gives no deference to standard Customs rulings simply means that it has not afforded them *Chevron* deference, *i.e.*, controlling weight. To say that the court of appeals held that classification rulings of the Customs Service are "to be

disregarded utterly in interpreting the customs provisions" misstates the holding of the court of appeals.

III. 19 U.S.C. § 1502(a) IS NOT AN EXPLICIT CONGRESSIONAL AUTHORIZATION FOR CUSTOMS TO ISSUE BINDING RULINGS WITH THE FORCE OF LAW

Petitioner's edited presentation of 19 U.S.C. § 1502(a) amounts to a misstatement of the law. Quoting 19 U.S.C. § 1502(a), petitioner states on page 14 of its brief:

> Congress has authorized the agency to adopt such "binding rulings prior to the entry of the merchandise" as may "be necessary to secure a just, impartial, and uniform appraisement of imported merchandise and the classification and assessment of duties thereon * * *."

In fact, 19 U.S.C. § 1502(a) provides that the Secretary of the Treasury shall

> establish such rules and regulations not inconsistent with the law ***(including regulations establishing procedures for the issuance of*** binding rulings prior to the entry of the merchandise concerned) and may ***disseminate such information*** as may be necessary to secure a just, impartial, and uniform appraisement of imported merchandise and the classification and assessment of duties thereon at the various ports of entry (emphasis added).

SUMMARY OF ARGUMENTS

The decision of the court of appeals in this case is consistent with previous decisions of this Court, including the Court's decision in *Haggar*. In *Haggar*, this Court held that the legal framework established in *Chevron* applies to Customs regulations promulgated in accordance with notice-and-comment procedures. *Haggar*, 526 U.S. at ___; 119 S.

Ct. at 1400. At issue in this case is whether *Chevron* "controlling weight" deference is to be accorded to ordinary decisions on tariff classification, as expressed in ruling letters issued to and binding on only one person.

This case does not present questions of exceptional importance to the planning of commercial transactions and to the administration of the customs laws. The judgment of the court of appeals is consistent with decades of practice with respect to the administrative classification rulings of the U.S. Customs Service. This practice permits an importer, at its discretion, to seek a tariff classification ruling from the U.S. Customs Service for specific goods the company imports. If the importer disagrees with the agency decision, it must import the goods using the tariff classification indicated in the ruling and protest the classification upon liquidation of the entry. If Customs denies the protest, the importer may seek judicial review in the Court of International Trade and the Court of Appeals for the Federal Circuit. This is the well-established and orderly process that the respondent followed in this case. It is a process that, for decades, has permitted importers to plan their commercial transactions and the U.S. Customs Service to rationally administer the customs laws.

Amicus curiae respectfully urges this Court to deny the petition for a writ of certiorari to the U.S. Court of Appeals for the Federal Circuit.

ARGUMENT

I. THE DECISION OF THE COURT OF APPEALS IS CONSISTENT WITH THIS COURT'S DECISIONS IN *HAGGAR* AND *CHEVRON*, AS WELL AS OTHER SUPREME COURT PRECEDENT

Chevron and its progeny do not stand for deference to agency interpretations in any format, no matter how informal or summary. Rather, they stand for the proposition that courts should give controlling weight to an authoritative agency interpretation expressed in a given format if the agency can

reasonably be construed as exercising authority delegated by Congress. For this reason, *Chevron* deference is accorded only to the extent that the agency acts pursuant to Congressional authorization in a format that Congress intended to be binding on the courts.

Courts have uniformly held that in according controlling-weight *Chevron* deference to an agency interpretation of a statute, the threshold question is one of delegation. *Adams Fruit Co., Inc. v. Barrett*, 494 U.S. 638, 649 (1990) ("A precondition to deference under Chevron is a congressional delegation of administrative authority"); *Bowen v. Georgetown U. Hospital*, 488 U.S. 204, 208 (1988) ("It is axiomatic that an administrative agency's power to promulgate legislative regulations is limited to the authority delegated by Congress"). Thus, courts should accord an agency interpretation *Chevron* deference only if the agency uses the procedures prescribed by Congress to create an authoritative interpretation binding on the courts. That is, when faced with the question of whether to accord an agency interpretation the force of law, a court must determine "whether Congress intend[ed] the agency's interpretation to bind the courts[.] The touchstone in every case is whether Congress intended to delegate to the agency the power to interpret with the force of law in the particular format that was used." Robert A. Anthony, *Which Agency Interpretations Should Bind Citizens and the Courts?*, 7 Yale J. on Reg. 1, 30-31, 33 (1990) ("*Which Agency Interpretations?*").[3] This Court endorsed this approach in

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[3] Numerous courts have cited this article as a leading authority on the propriety of according interpretations *Chevron* deference. *See, e.g., Northwest Tissue Ctr. v. Oregon Tissue Bank*, 1 F.3d 522, 536 (7th Cir. 1993); *Nat'l Family Planning and Reproductive Health Ass'n., Inc. v. Sullivan*, 979 F.2d 227, 240 (D.C. Cir. 1992); *Lane v. U.S. Postal Serv.*, 964 F. Supp. 1435, 1437 (D. Nev. 1996); *Earth Island Inst. v. Brown*, 865 F. Supp. 1364, 1374 (N.D. Cal. 1994); *see also* Kenneth C. Davis, ADMINISTRATIVE LAW OF THE EIGHTIES 506 (1989 Supp.) ("[t]he crucial criterion is whether Congress has conferred on the agency a power to make law through rules; if the agency exercises such power, the resulting

Haggar, noting that deference to Customs regulations was warranted because "[v]alid regulations establish legal norms." *Haggar*, 360 U.S. at __; 119 S. Ct. at 1399.

Congress has not authorized Customs, either expressly or implicitly, to issue administrative classification rulings that have the force of law and bind the courts in civil actions brought by importers for a refund of duties paid. Whereas *Haggar* involved the express delegation to Customs in 19 U.S.C. § 1502(a) to issue regulations with the force of law, this case involves administrative classification rulings, for which there is no comparable delegation. While 19 U.S.C. § 1502(a) parenthetically mentions rulings issued by Customs, it contains neither an express nor implied delegation of authority to issue classification rulings that bind the courts. The parenthetical merely specifies a type of regulation that Congress has authorized Customs to promulgate, *i.e.*, "regulations establishing procedures" for issuing rulings, and it also authorizes Customs to disseminate information necessary to secure uniform classification and appraisement of imported goods.[4]

Regulations such as the one at issue in *Haggar* comply with the rulemaking requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. § 551 *et seq*. This Court has recognized that an agency's compliance with notice-and-comment rulemaking requirements under the APA is solid justification for deferring to the resulting regulation. Customs regulations deserve *Chevron* deference "in light of

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rules . . . have the force of law. . . ; if Congress has not conferred such power. . . ; the reviewing court normally has authority to substitute its judgment for that of the agency. . .").

[4] Moreover, the legislative history of the prior 19 U.S.C. § 1624, which section addressed the issuance of rulings, confirms that Congress did not intend rulings to have the force of law. "A ruling letter is binding on Customs only with respect to the transaction it describes." S. Rep. No. 95-778 at 21 (1978), *reprinted in* 1978 U.S.C.C.A.N. 2211, 2233. If Congress had intended Customs rulings to bind the courts, it would not have limited their binding effect in such a manner.

the fact that the agency utilized the notice-and-comment rulemaking process before issuing the regulations." *Haggar*, 360 U.S. at __, 119 S. Ct. at 491. Regulations issued after public debate and discourse represent a final, well-reasoned, authoritative agency interpretation.

In contrast, Customs does not intend for ordinary classification rulings to establish rules of general applicability and thus issues them without engaging in public discussion, debate or any on-the-record proceeding. The volume of classification rulings issued each month prevents Customs from providing an authoritative, well-reasoned exposition of its interpretation of the statute in each letter. Classification rulings may be issued by any of several levels of Customs officials, and may be modified or revoked at any time. *See* 19 C.F.R. § 177.9(d).

II. THE DECISION OF THE COURT OF APPEALS IS CONSISTENT WITH THE TREATMENT ACCORDED TO REVENUE RULINGS OF THE INTERNAL REVENUE SERVICE

The decision of the court of appeals in this case ensures that Customs classification rulings do not receive greater deference by the courts than revenue rulings issued by the Internal Revenue Service (IRS). Customs' practice of interpreting the tariff schedule and issuing classification rulings is less formal than the practice of the IRS in interpreting the Internal Revenue Code and issuing revenue rulings and letter rulings. *Mead*, 185 F.3d at 1308; Pet. App. 7a. IRS revenue rulings are an official interpretation of the tax laws applied to a specific fact situation. They are published in the Internal Revenue Bulletin and in the Cumulative Bulletin. They are not, however, published in the Federal Register or the Code of Federal Regulations. Treas. Reg. 601.201(a)(6).

This Court has long concurred with the practice of according greater deference to IRS regulations than to IRS

revenue rulings. In *Commissioner v. Schleier*, 515 U.S. 323, 336 n.8 (1995), this Court noted that IRS "interpretive rulings do not have the force and effect of regulations." *See also Davis v. United States*, 495 U.S. 472, 484 (1990); *Rowen Cos, Inc. v. United States*, 452 U.S. 247, 261 n.17 (1981); *Bartels v. Birmingham*, 332 U.S. 126, 132 (1947); John F. Coverdale, *Court Review of Tax Regulations and Revenue Rulings in the Chevron Era*, 64 Geo. Washington L. Rev. 35, 83 (1995). Customs classification rulings are of lesser stature than IRS revenue rulings and accordingly the deference to which they are entitled should not be greater.

III. THE DECISION OF THE COURT OF APPEALS IS CONSISTENT WITH DECADES OF JUDICIAL AND ADMINISTRATIVE PRACTICE

The decision of the court of appeals does not leave "importers and the Customs Service without effective guidance for a wide range of transactions." Petition for a Writ of Certiorari 22. Rather, it preserves the long-standing practice of treating the scope of tariff subheadings as matters of law to be determined in the first instance by the specialized courts created by Congress.

From the enactment of the first Customs Statute in 1789 until the present, customs classification decisions have not been accorded controlling-weight deference by the courts. *See, e.g., Two Hundred Chests of Tea*, 22 U.S. (9 Wheat.) 430 (1824) (Collector of Customs' classification of tea accorded no deference in seizure case); *Elliot v. Swartwout*, 35 U.S. 137, 151-53 (1836) (Collector of Customs' classification of imported shawls accorded no deference).

Customs has issued rulings on classification issues for approximately 150 years. *See, e.g.*, Treas. Ss. 4, Synopsis of Sundry Decisions of the Treasury Department, on the Construction of the Tariff, Navigation, and other Acts, During the Year ending December 31, 1868; Treas. Ss. 6707, Synopsis of Sundry Decisions of the Treasury Department, on the Construction of the Tariff, Navigation, and other Acts,

During the Year ending December 31, 1885; T.D. 20766, 1 Treas. Dec. 442 (1899). Historically, the courts have never accorded these classification rulings controlling weight as in *Chevron*.

Customs classification rulings, coupled with the decisions of the specialized courts charged with interpreting the tariff schedule, have provided both importers and the Customs Service with "effective guidance for a wide range of transactions" for almost 150 years.

A. The Current Practice with Respect to Customs Classification Rulings Provides Effective Guidance for Importers

Under current regulations, an importer seeking guidance regarding how its goods will be classified, and at what rate they will be dutiable, may request a classification ruling from Customs. 19 C.F.R. § 177.1(a), (c). Such a ruling is binding on the party requesting the ruling and on Customs personnel with respect to all prospective transactions involving the merchandise described in the ruling, unless the ruling is modified or revoked. 19 C.F.R. § 177.9. If the party requesting a ruling does not agree with Customs' classification, that party must import the merchandise using the classification determined by Customs and then protest the classification upon liquidation of the entry. 19 C.F.R. § 174.11. If the protest is denied, the party may seek judicial review of the classification decision in the Court of International Trade and the Court of Appeals for the Federal Circuit. 28 U.S.C. § 1581(a); 28 U.S.C. § 1295(a)(5).

This procedure has long permitted importers to plan their commercial transactions, while allowing Customs to rationally administer the customs laws. The decision of the court of appeals does not affect these procedures, the manner in which importers plan their commercial transactions, or the authority of Customs to require importers to enter their merchandise using the tariff subheading provided in a classification ruling.

B. Historically, Courts Have Not Accorded Controlling-Weight Deference to Customs Classification Rulings

Customs classification rulings have never been treated as binding the specialized courts created by Congress to adjudicate tariff classification disputes. In fact, the suggestion that such rulings are entitled to controlling weight under *Chevron* is of recent vintage, having only been raised in the Court of Appeals for the Federal Circuit in recent years. *See, e.g., Rollerblade, Inc. v. United States*, 112 F.3d 481, 483 (Fed Cir. 1997); *Universal Elecs. Inc. v. United States*, 112 F.3d 488, 491-93 (Fed Cir. 1997); *Goodman Mfg. v. United States*, 69 F.3d 505, 508 (Fed. Cir. 1995); *Crystal Clear Indus. v. United States*, 44 F.3d 1001, 1003 (Fed Cir. 1995).

Historically, courts reviewing Customs classification decisions have never accorded them controlling-weight deference as in *Chevron*. In discussing the weight to be accorded a classification decision made by Customs, the United States Customs Court in *Sunbeam Corp. v. United States*, 62 Cust. Ct. 434, 442, Cust. Dec. 3794 (1969), *aff'd*, 57 C.C.P.A. 97, C.A.D. 984, 425 F.2d 1274 (Cust. & Pat. App. 1970), stated:

> At any rate, although of some interest in ascertaining the Bureau's approach to classification of merchandise, this court will not be led or misled by a Bureau ruling; the final determination as to the tariff classification of imported merchandise in litigation has been reposed in this court by Congress, subject to appeal to the appropriate tribunal.

See also Venetianaire Corp. of Am. v. United States, 470 F. 2d 1047, 1049 (C.C.P.A. 1973); *Corp. Argentina de Productores de Carnes v. United States*, 32 C.C.P.A. 175, C.A.D. 304 (1945); *Sentora Hardware Dist. v. United States*, 59 Cust. Ct. 558, 565, Cust. Dec. 3227 (1967); *Borneo Sumatra Trading Co., Inc. v. United States*, 56 Cust. Ct. 166, 172-77, Cust. Dec. 2624 (1966).

The weight to be accorded Customs' classification decisions is rarely discussed in the reported court cases because of the recognized principle that the specialized courts created by Congress should reach an independent determination regarding the correct classification of imported merchandise. According controlling-weight deference to Customs classification rulings would fundamentally change the scope of review in tariff classification disputes, would produce the very uncertainty that petitioner argues has been created by the decision of the court of appeals, and would prevent meaningful judicial review of the agency's classification decisions.

C. The Judgment of the Court of Appeals Is Not "Anomalous"

Petitioner's contention that the judgment of the court of appeals creates an anomalous regime for Customs is belied by a close examination of the cases cited. None of the cases or the article by former Chief Judge Re cited on pages 22-23 of the petition deals directly with Customs classification rulings.

In *Zenith Radio Corp. v. United States*, 437 U.S. 443 (1978), a countervailing duty case, the issue was the weight to be accorded to a longstanding and consistent administrative practice of the Treasury Department on the treatment of certain taxes under the countervailing duty law. This Court accorded the administrative practice "considerable weight," not because it was first enunciated in a "ruling" by the Treasury Department, but because the statutory interpretation at issue had been adopted within one year of initial passage of the statute at issue, had been uniformly followed by the Department for over 80 years and because the statute had been reenacted by Congress five times without modification. *Zenith*, 437 U.S. at 457.

In *United States v. Vowell*, 9 U.S. (5 Cranch) 368 (1809), the issue was when duties became due. In *Guess? Inc. v. United States*, 944 F.2d 855 (1991), the issue was the proper interpretation of a drawback regulation. In *Generra Sportswear Co. v. United States*, 905 F.2d 377 (1990), the

issue before the court was the correct valuation of imported merchandise. In *Dal-Tile Corp. v. United States*, 829 F. Supp. 394 (1993), *aff'd* 26 F.3d 139 (Fed. Cir. 1994), the issue was when certain liquidations took place as a matter of law. Finally, nowhere in the article *Litigation Before the United States Court of International Trade* does former Chief Judge Re suggest that Customs classification rulings should be accorded controlling weight under *Chevron*. Hon. Edward D. Re, *Litigation Before the United States Court of International Trade*, 19 U.S.C.A. §§ 1-1300, Cum. Ann. Pocket Part, at XI (1998).

Mitsui Foods, Inc. v. United States, 867 F.2d 1401 (Fed. Cir 1989) dealt with a statutory interpretation by the National Marine Fisheries Service (NMFS). Although the plaintiff in *Mitsui* sought judicial review of Customs' liquidation of its entry under a particular tariff classification, the agency interpretation under attack was actually that of the NMFS.

At issue in *Mitsui Foods* was not the deference to be accorded to Customs' classification (which was strictly the ministerial act of classifying the tuna in an in-quota or out-of-quota provision, based on data reported by the NMFS) but rather the deference to be accorded to the NMFS's determination that the tariff term "United States pack of canned tuna" excluded tuna packed in American Samoa. The Court of International Trade reviewed the role of the NMFS in administering the tariff-rate quota, the purpose of the tariff-rate quota in protecting domestic industry, the reasonableness of the NMFS interpretation, and Congressional acquiescence in the agency interpretation. Based on its evaluation of these factors, the Court of International Trade determined that the NMFS interpretation was reasonable and should not be disturbed, and hence Customs' classification of the tuna was correct. *Mitsui Foods*, 688 F. Supp. 605, 609 (C.I.T. 1988). The court of appeals affirmed, adopting the reasoning of the trial court as its own. *Mitsui Foods*, 867 F.2d at 1403.

The decision in *Mitsui Foods* in no way suggests that Customs classification rulings are entitled to controlling-

weight deference under *Chevron*. The court of appeals' statement that "Customs interpretation of this language in item 112.30, TSUS, does not contravene any clearly discernible legislative intent and is 'sufficiently reasonable,'" *Mitsui Foods*, 867 F.2d at 140, and therefore is entitled to "substantial weight," is simply a reference to the way in which Mitsui raised the issue, *i.e.*, by protesting the liquidation of the customs entry of its tuna at the higher rate of duty. Moreover, there clearly was no Customs classification ruling under 19 C.F.R. Part 177 involved in *Mitsui Foods*. In any event, "substantial weight" is not the equivalent of "controlling weight."

IV. ADMINISTRATION OF THE TARIFF SCHEDULE DOES NOT IMPLICATE THE KIND OF POLICYMAKING AT ISSUE IN *CHEVRON*

This case does not implicate the kind of policymaking or statute at issue in *Chevron* and *Haggar* In issuing classification rulings, Customs does not resolve the competing interests of citizens but rather administers the tariff schedule with the objective of ensuring its uniform application at all ports of entry. "An ambiguous legal rule does not have a single 'right' meaning; there is a range of possible meanings; the selection from the range is an act of policymaking. The person who fleshes out the meaning of the rule is the true law-giver in the circumstances." *Homemakers N. Shore, Inc. v. Bowen*, 832 F.2d 408, 411 (7th Cir. 1987). In contrast, the scope of each subheading in the U.S. tariff schedule is definite. It is the intent of Congress that every good imported into the United States be classified in the single most appropriate tariff subheading, and that duty be assessed accordingly. Interpreting the terms of a tariff provision is the act of interpreting for a single best meaning, *see* Anthony, *Which Agency Interpretations?* at 34, and is best left to the specialized courts Congress created to administer the tariff schedule and to ensure its uniform application throughout the country. The Court of International Trade and the U.S. Court of Appeals for the Federal Circuit should arrive at an independent determination regarding the scope of a given tariff subheading .

V. THE SECOND QUESTION PRESENTED BY PETITIONER IS NOT PROPERLY BEFORE THIS COURT

Whether the Customs Service reasonably interpreted the statutory phrase "diaries, notebooks and address books, bound" in subheading 4820.10.20 of the Harmonized Tariff Schedule of the United States is not properly before this Court. The court of appeals determined that standard Customs classification rulings are not entitled to controlling weight under *Chevron*. For this reason, and since it based its decision on a traditional lexicographic analysis, the court of appeals never addressed whether Customs reasonably interpreted the statutory phrase. There is no judgment on this issue, and this Court should not address this matter in the first instance. Accordingly, this Court should deny the petition for a writ of certiorari on the second issue presented.

CONCLUSION

For the foregoing reasons, *amicus curiae* respectfully asks this Court to deny the United States' petition for a writ of certiorari to the U.S. Court of Appeals for the Federal Circuit.

Respectfully submitted.

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DATE: May 1, 2000

APPENDIX

HQ NO. 953126 (JAN. 11, 1993)

Department of the Treasury
United States Customs Service

1993 U.S. Custom HQ Lexis 170: HQ 953126

January 11, 1993

DOCUMENT-NO: CLA-2 CO:R:C:T 953126 CAB

CATEGORY: Classification

TARIFF-NO: 4820.10.2010

O'Neill & Whitaker, Inc.
1809 Baltimore Avenue
Kansas City, MO 64108

REFERENCE: Modification of New York Ruling Letter (NYRL) 864206 dated June 19, 1991

Dear Mr. O'Neill:

The Area Director of Customs, New York, has requested that this office review NYRL 864206 dated June 19, 1991. Since the issuance of that ruling, our position on the classification of multi-function ring-binder books or daily planners has been modified. Accordingly, this ruling modifies NYRL 864206.

NYRL 864206 concerned the classification of a multi-function ring-binder book, referred to as a "Personal Planner". This "Personal Planner" was comprised of a calendar, a daily planner, an address book, a fold-out map, card holders, a ruler, and a notepad. In NYRL 864206, Customs concluded that the merchandise at issue was classifiable in subheading 4820.10.4000, HTSUSA, the duty-free provision for other (non-enumerated) articles similar to registers, account books,

notebooks, receipt books and diaries. Customs determined that the submitted sample, commercially referred to as a "daily planner", was considered a looseleaf book with multi-functions.

After further review, concerning the classification of daily planners or multi-function looseleaf binders, Customs has modified its position on the applicable classification. In Headquarters Ruling Letter (HRL) 089960 dated February 10, 1992, Customs ruled that multi-function looseleaf binders or daily planners are generally used for daily recordkeeping and are classifiable as diaries. HRL 089960 also makes a distinction regarding whether the merchandise at issue is bound and classifiable as a diary under subheading 4820.10.2010, HTSUSA, or not bound and classifiable as an article similar to a diary under subheading 4820.10.4000, HTSUSA. Accordingly, the "Personal Planner" is properly classifiable under subheading 4820.10.2010, HTSUSA. The rate of duty is 4 percent *ad valorem*.

In order to ensure uniformity in Customs classification of this merchandise and eliminate uncertainty, we are modifying NYRL 864206 to reflect the above classification effective with the date of this letter. However, if after your review, you disagree with the legal basis for our decision, we invite you to submit any arguments you might have with respect to this matter for our review. Any submission you wish to make should be received within thirty (30) days of the date of this letter.

This notice to you should be considered a modification of NYRL 864206 under 19 CFR 177.9(d)(1). It is not to be applied retroactively to NYRL 864206 (19 CFR 177.9(d)(2)) and will not, therefore, affect past transactions for the importation of your merchandise under that ruling. However, for the purposes of future transactions of merchandise of this type, NYRL 864206 will not be valid precedent. We recognize that pending transactions may be adversely affected by this modification, in that current contracts for importation arriving at a port subsequent to this decision will be classified

pursuant to it. If such a situation arises, you may, at your discretion, notify this office and apply for such relief from the binding effects as may be warranted by the circumstances. However, please be advised that in some instances involving import restraints, such relief may require separate approvals from other government agencies.

ISSUED-BY: John Durant, Director

CUSTOMS SERVICE DISCLAIMER: Inclusion of a Customs ruling in LEXIS does not constitute publication of the ruling under 19 CFR 177.10(b). An established and uniform practice is created for Customs rulings only by full-text publication in the Customs Bulletin and only if the ruling concerns a rate of duty or change.

NOTE: Pursuant to Fed. Cir. R. 47.6 this order
Is not citable as precedent. It is a public order.

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

98-1569

THE MEAD CORPORATION, PLAINTIFF-APPELLANT

v.

UNITED STATES, DEFENDANT-APPELLEE

[Filed: May 27, 1999]

Before NEWMAN, RADER, and SCHALL, Circuit Judges.

ORDER

The parties shall file supplemental briefs, not to exceed 20 pages in length, on or before June 28, 1999.

Only the following question is to be addressed in the briefs:

How, if at all, does the Supreme Court's decision in United States v. Haggar Apparel Co., 119 S. Ct. 1392 (1999), affect this court's standard of review of classification rulings issued by the United States Customs Service?

FOR THE COURT,

/s/ JAN HORBALY
Jan Horbaly
Clerk

cc: Amy M. Rubin, Esq.
Sidney H. Kuflik, Esq.